

(2012) 07 P&H CK 0300

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8450 of 2009

Kulwinder Kaur

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 25, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226, 243ZG
- Punjab Panchayati Raj Act, 1994 - Section 11

Citation: (2012) 4 RCR(Civil) 246

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: Vikas Singh, for the Appellant; B.B.S. Teji, Addl. A.G., Punjab for the State and Mr. P.S. Khurana, Advocate for Respondent Nos. 5 to 11, for the Respondent

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The petitioner is resident of Village Jagpalpur and belongs to Scheduled Caste category. He has approached this Court to challenge the action of the respondents alleging that less reservation was made for post of Panches in scheduled caste category. There are 7 Panches elected in this Gram Panchayat. Two posts of Panches were reserved for scheduled caste. During earlier election, three posts were reserved for scheduled caste panches. As per Section 11 of the Punjab Panchayati Raj Act, reservation for the post of Panch is to be done on the basis of proportion to the total number of Panches by taking in view the population of the Scheduled caste in the total population of Gram Sabha.

2. The Block Development and Panchayat Officer, Phagwara, has supplied information on 22.1.2009, stating that as per census of 2001, total population of the village is 1559, out of which 783 were scheduled caste. It is, thus, pointed out that

more than 50% population belongs to scheduled caste category and atleast 3 posts of Panches ought to have been reserved for scheduled caste. Accordingly, the present writ petition is filed to say that the entire election process is in violation of the mandatory provisions and so the entire election be set-aside.

3. The reply is filed by the respondents.

4. Learned counsel for the petitioner would refer to the contents of the reply to say that information, which was supplied by the Block Development and Panchayat Officer was wrong. As per the information obtained under the Right to Information Act, the petitioner was apprised that there were only 526 scheduled caste residents and the reservation for Panches has been made in accordance with law. This, according to the petitioner, would lead to scheduled caste being under represented. The State of Punjab has admitted this discrepancy and has mainly attributed this on the part of negligence of Block Development and Panchayat Officer, Phagwara. In the reply, it is also disclosed that they have initiated action against the Block Development and Panchayat Officer for providing this wrong information.

5. The case was adjourned for the respondents to file an affidavit as to what action has been proposed against the Block Development and Panchayat Officer. Enquiry has been held and punishment of stoppage of one increment with cumulative effect has been imposed on the Block Development and Panchayat Officer.

6. Counsel for the petitioner submits that once this factual position is admitted, the whole process of election would be void and so should be set- aside. To me, this would sound to be too sweeping a submission for acceptance.

7. First question that would directly stair on the face is the maintainability of the writ to challenge election, which has been concluded. Petitioner prays for setting-aside the election of all elected Panches including those who were elected in General Category. Let us first notice if this election can be set- aside by a writ Court.

8. This was the precise question which arose for consideration before the Hon"ble Supreme Court in the case of [Harnek Singh Vs. Charanjit Singh and Others](#) . In the opening part of the judgment, the Hon"ble Supreme Court has posed the question which is as under :-

Whether a writ court should entertain a dispute as regard validity or otherwise of an election falls for decision in this appeal which arises out of a judgment and other dated 18.9.2003 passed by the Punjab and Haryana High Court in CWP No. 1987 of 2003."

9. The Hon"ble Supreme Court referred to Article 243-0 of the Constitution of India which mandates that all election disputes must be determined only by way of an election petition. As is observed by the Hon"ble Court, this by itself may not per se bar the judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. In [C. Subrahmanyam Vs. K.](#)

[Ramanjaneyullu and Others,](#), the three Judges Bench of the Hon"ble Supreme Court observed that a writ petition should not be entertained when the main question which fell for decision before the High court was non-compliance of the provisions of the Act which was one of the grounds for an election petition in terms of Rule 12 made under the Act. In [Jaspal Singh Arora Vs. State of M.P. and Others,](#) the Hon"ble Supreme Court dealt with this question and held that in view of mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question, except by election petitions as provided under this Act. The bar to interfere by the courts in electoral matters contained in Article 243-ZG of the Constitution was said to have been overlooked by the High court while allowing the writ petition. The Hon"ble Court further observed that apart from bar under Article 243-ZG on the settled principles, interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of statutory provision for election petition and also the fact that in an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court.

10. In fact, the court also considered the question under what circumstances an application for judicial review would be maintainable against an order passed by Election Commission in the case of [Election Commission of India Through Secretary Vs. Ashok Kumar and Others,](#) In this Case, it is observed that :-

....in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in large public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or a single constituency having arisen and demanding judicial interference.

11. The above observation of the Hon"ble Supreme Court, in my view, would provide a complete answer to a question posed about the maintainability of a writ petition to challenge the election or election process. Incidentally, it may also notice here that one of the ground on which the election can be challenged is that the result of the election had been materially affected. This being ground of challenge available for filing election petition, it will not be appropriate or wise to invoke the writ jurisdiction of this Court. The election in the village has been held and electorates have already exercised their choice. The persons, who have been elected, were on the basis of majority of votes obtained by them. Merely because one post of Panch was less reserved, in my view, would not go to vitiate the entire election process. The post, if had been reserved, then the scheduled caste would have competed amongst themselves and the person contested on the reserved posts is not to

compete with the general elected candidate. Merely because of one post having been reserved less vis-a-vis the population would not go to vitiate the entire election process. Even otherwise, I have serious doubt whether the writ Court can go into such like issues and nullify the choice of the electorates, who have exercised so on the basis of proper process issued. The person whose mistake has led to this situation has already been punished. Nothing is noticed from the record that this was purposely and intentionally done and ultimately could have any effect on the entire election. I am, thus, not inclined to interfere and invoke the writ jurisdiction.

The writ petition is accordingly dismissed.